

Application No.: 09/371,212
Amendment Dated: April 13, 2006
Reply to Office Action dated: October 13, 2005

buyer, including communication by at least one electronic mail message relating to the presented merchandise item.

REMARKS

This Amendment is responsive to the office action dated October 13, 2005. Claims 51-111 are pending and stand rejected. Reconsideration of this application is respectfully requested based on the amendments presented here and the arguments urged below.

In paragraph 1, the office action indicates that the information disclosure statement filed on August 26, 2005, fails to fully comply with the 37 CFR 1.98(a)(2). Applicant respectfully submits that an information disclosure statement and forms PTO-1449 are contemporaneously filed with this amendment. With this information disclosure statement, copies of all the foreign patents and articles are also submitted. Consideration of these documents is respectfully submitted.

In paragraphs 2 and 3, claims 51-106 are rejected under 35 U.S.C. Section 112. Specifically, with respect to the recitation in claim 51 of *"qualifying the buyer for consummating the transaction at least in part based on the check digit that includes a sum check for at least a portion of the digits,"* the Examiner believes that the Applicant's specification does not describe such a qualifying step. The Examiner proceeds to say that Applicant's specification is directed to "a system which controls and regulates communications between buyers and vendors, allowing negotiation with regard to goods and services. The Examiner alleges that the system does not handle *"consummation of a transaction."* Applicant respectfully submits that *"consummating a transaction"* is indeed one of the operations that his system accomplishes, which is described by the specification. By way of one example, on page 5 of the specification, it clearly describes that *"the present system recognizes the need for directing and exchanging communications, such as offers and responses, between select members of plural groups or sub-groups, analyzing and compiling data relating to such members, scheduling appointments, implementing face-to-face conferences (in real-time), and consummating transactions and billing relating to transactions between such groups."*

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In paragraph 4 of the office action, claims 108-109 are rejected under 35 U.S.C. Section 112. Claims 108 and 109 are amended to overcome the rejections under 35 U.S.C. Section 112.

In paragraph 6 of the office action, claims 51-79 are rejected under 35 U.S.C. Section 103(a) as being unpatentable over Shavit et al. in view of Kaye et al. and further in view of Foster. Applicant notes that the Examiner relies on three references to make this particular rejection. Likewise, in paragraph 7, claims 80-106 are rejected under 35 U.S.C. Section 103(a) as being unpatentable over the combination of Shavit and Kaye and further in view of Smith. Yet again, the Examiner relies on three references to make this particular rejection. In the course of describing the rationale for this rejection, the Examiner further takes official notice that it is old and well known in the art at the time of the invention to provide for freeze-frame and high resolution video capability in a video communication such that it would have been obvious to an artisan of ordinary skill to incorporate such well known video features within the combination of Shavit, Kaye and Smith in order to allow for a higher quality video reception. Applicant traverses this rejection. In paragraph 8 of the office action, claims 107-110 are rejected under 35 U.S.C. Section 103(a) as unpatentable over Shavit, Dworkin and Smith. Here again, the Examiner makes a rejection based on three references.

Applicant respectfully submits that the rejection for obviousness is improper because there is nothing in the cited prior art references, either singly or in combination, to suggest the desirability of the claimed subject matter. That the construction in a particular prior art reference would have resulted in the claimed combination had it followed the "common practice" of attaching certain parts does not show obviousness at the time of the invention but rather reflects improper hindsight analysis and the reading into the art of Applicant's own teachings.

In re Raynes, 7 F.3d 1037, 1039 (Fed. Cir. 1993):

When determining whether a new combination of known elements would have been obvious in terms of 35 U.S.C. § 103, the analytic focus is upon the state of knowledge at the time the invention was made. The Commissioner bears the burden of showing that such knowledge provided some teaching, suggestion, or motivation to make the particular combination that was made by the applicant. *In re Oetiker*, 977 F.2d 1443, 1445-47, 24 U.S.P.Q.2D (BNA) 1443, 1444-46 (Fed. Cir. 1992); *In re Piasecki*,

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745 F.2d 1468, 1471-72, 223 U.S.P.Q. (BNA) 785, 788 (Fed. Cir. 1984). This determination is made from the viewpoint of the hypothetical person of ordinary skill in the field of the invention. 35 U.S.C. § 103; *In re Gorman*, 933 F.2d 982, 986, 18 U.S.P.Q.2D (BNA) 1885, 1888 (Fed. Cir. 1991).

In re Deminski, 796 F.2d 436, 442 (Fed. Cir. 1986):

"There was no suggestion in the prior art to provide Deminski with the motivation to design the valve assembly so that it would be removable as a unit. The board argues that if Pocock had followed the "common practice" of attaching the valve stem to the valve structure, then the valve assembly would be removable as a unit. The only way the board could have arrived at its conclusion was through hindsight analysis by reading into the art Deminski's own teachings. Hindsight analysis is clearly improper, since the statutory test is whether "the subject matter as a whole would have been obvious at the time the invention was made." 35 U.S.C. § 103 (1982); *In re Spinnoble*, 56 C.C.P.A. 823, 405 F.2d 578, 585, 160 U.S.P.Q. (BNA) 237, 243 (CCPA 1969)."

In paragraph 9 of the office action, claim 111 is rejected under 35 U.S.C. Section 102(b). Claim 111 is amended and is clearly distinct from Dworkin in its present form. Claim 111 recites that the presentations of merchandise items include video presentations of the merchandise items themselves with text data. Dworkin is void of such teaching.

Respectfully, Applicant urges the Examiner to reconsider her rejections in view of the above arguments and amendments. Favorable consideration and allowance of the claims pending here is respectfully requested.

Respectfully submitted,

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By: /Reena Kuyper/
Reena Kuyper
Registration No. 33,830

Berry & Associates P.C.
9255 Sunset Blvd., Suite 810
Los Angeles, CA 90069
(310) 247-2860